

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 5:23-cv-00050-SPG-AJR

Date: October 19, 2023

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Title: Kenneth Walter Lewis Smith v. John Merchant, et al.

DOCKET ENTRY: **ORDER TO SHOW CAUSE WHY THIS ACTION SHOULD
NOT BE DISMISSED FOR FAILURE TO PROSECUTE**

PRESENT:

HONORABLE A. JOEL RICHLIN, UNITED STATES MAGISTRATE JUDGE

Claudia Garcia-Marquez

Deputy Clerk

None

Court Reporter/Recorder

None

Tape No.

ATTORNEYS PRESENT FOR PETITIONER:

None Present

ATTORNEYS PRESENT FOR RESPONDENT:

None Present

PROCEEDINGS: (IN CHAMBERS)

On January 3, 2023, Petitioner Kenneth Walter Lewis Smith, a California state prisoner proceeding *pro se*, filed a Petition for Writ of Habeas Corpus by a Person in State Custody under 28 U.S.C. § 2254 (“Petition”). (See Dkt. 1.) On August 30, 2023, this Court issued an order staying Petitioner’s case pursuant to Rhines v. Weber, 544 U.S. 269, 276 (2005), so that Petitioner could exhaust his state court remedies. (Dkt. 17.) As conditions of the stay, the Court ordered Petitioner to:

1. File a state habeas petition in the California Supreme Court setting forth the Petition’s unexhausted claim **no later than September 29, 2023**.
2. File with this Court, a Notice of Filing State Habeas Petition and attach a copy of the state habeas petition (without exhibits) **no later than October 6, 2023**.

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3. File a status report in this Court **no later than October 30, 2023**, informing the Court of his progress in exhausting his state court remedies. This Court further ordered Petitioner to file further status reports **every sixty (60) days** following his first status report until the California Supreme Court issues its decision.

Petitioner was warned that failure to comply with the conditions of the stay order could result in the stay being lifted, the Court's refusal to consider any request by Petitioner to adjudicate claims that may become exhausted at a future date, and/or a recommendation that this action be dismissed. Almost two weeks have passed since Petitioner's deadline to file a Notice of Filing State Habeas Petition and the docket does not reflect that any such notice has been filed.

Petitioner is ordered to file a Notice of Filing State Habeas Petition and attach a copy of the state habeas petition (without exhibits) by **October 30, 2023**, or show cause why this action should not be dismissed with prejudice for failure to prosecute. **Petitioner is expressly advised that if he does not file a Notice of Filing State Habeas Petition by the Court's deadline or respond to this order, the Court will recommend that this action be dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41(b) for failure to prosecute and obey Court orders.** If Petitioner no longer wishes to pursue this action, he may voluntarily dismiss the action by filing a Notice of Dismissal in accordance with Federal Rule of Civil Procedure 41(a)(1). A form Notice of Dismissal is attached for Plaintiff's convenience.

IT IS SO ORDERED.

Attachment:

CV-09, Notice of Dismissal Pursuant to Federal Rules of Civil Procedure 41(a) or (c).